



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

April 14, 2021

Via Electronic Mail

RI Department of Environmental Management
Office of Land Revitalization and Sustainable Materials Management
Attention: Yan Li
235 Promenade Street
Providence, RI 02908
yan.li@dem.ri.gov

**RE: *Medical Waste Management Facility License Application
Medrecycler-RI, Inc – 1600 Division Road, West Warwick***

Dear Yan Li,

Please accept this letter addressing the numerous procedural and substantive concerns regarding Medrecycler-RI, Inc.'s ("MRI") application to operate a medical waste pyrolysis facility in West Warwick, RI. Given the novelty of the technology proposed by the above-referenced applicant, strict adherence to all applicable statutory and regulatory requirements and robust public participation in the entire decision-making process is required. For the reasons stated below, the Office of the Attorney General respectfully requests the Rhode Island Department of Environmental Management ("RIDEM") to stay its review of MRI's application until the proper technology analysis is conducted and all required certifications are obtained pursuant to the Refuse Disposal Act and its implementing Medical Waste regulations. R.I.G.L. § 23-18.9-1 *et seq*; 250-RICR-140-15-1 *et seq*.

The regulatory process required to build this first-of-its-kind medical waste facility is intended to be robust due to the inherent health and safety risks involved in processing and disposing of potentially infectious waste, especially when adjacent to residential communities. Further, while the applicant has proffered that pyrolysis involves different technology than traditional incineration, there are still many unknowns. Unmitigated, pyrolysis has the potential to emit many of the same toxic and noxious pollutants that necessitated the phase out of medical waste incinerators nationwide. Accordingly, in order to protect the health and safety of Rhode Island and its citizens, it is imperative that the State's regulatory review hold MRI's application to the most stringent applicable standards. To date, they have not been held to those standards.

1) The Technology has not been Thoroughly Tested

The Medical Waste Regulations expressly provide that certain technologies are allowed under state law to process medical waste - mainly incineration, chemical disinfection, and steam sterilization. See 250-RICR-140-15-1.15. However, as pyrolysis is not included in these allowable technologies, the proposed use of a pyrolysis process triggers the “Alternative Technologies” regulatory analysis, which provides in pertinent part:

5.Approval of Alternative Technologies:

a. The Director shall not grant approval for the use of any other combination of treatment, destruction and/or disposal technologies, *unless and until such technologies are proven, on the basis of thorough tests* to:

(1) Completely and reliably inactivate *Geobacillus stearothermophilus* spores or *Bacillus atrophaeus* spores at a 4 Log₁₀ reduction or greater; and

(2) Completely and reliably inactivate vegetative bacteria, fungi, viruses, parasites, and mycobacteria at a 6 Log₁₀ reduction or greater [this requirement is applicable to technologies not based on thermal and chemical treatment]; and,

(3) *Be protective with respect to total impact on the environment*; and,

(4) *Ensure the health, safety and welfare of both facility employees and the general public*; and,

(5) Ensure that the total weight and/or volume of the end product of the alternative technology does not exceed the total weight and/or volume of the regulated medical waste prior to treatment and/or destruction. Testing must also demonstrate that inactivation is uniform and within containers reasonably likely to be treated in the system.

250-RICR-140-15-1.15(F) (*emphasis added*). These regulations intend to ensure that alternative technologies be proven safe and effective by *thorough testing* before RIDEM can approve a medical waste facility. Here, the technology has never been utilized or tested for the kind and amount of waste proposed. Instead, the purported destruction efficiencies, emissions, and overall safety of the Facility has been based on modeling and estimations. These are not equivalents of, nor substitutes for, the *thorough testing* required for Alternative Technologies.

2) The Application Lacks Necessary State Planning and Municipal Zoning Approvals

Further, the Refuse Disposal statute provides that the application for a Medical Waste Facility permit must be submitted *simultaneously* with a “certificate of final determination from the municipality in which it is proposed to site the facility that the site conforms with all applicable local land use and control ordinances or on appeal a final judgment of a court that the proposed site for the facility conforms with all applicable land use and control ordinances of the

municipality” and a “certificate of approval of the proposed site issued by the state planning council.” R.I.G.L. § 23-18.9-9(a)(1); see also R.I.G.L. § 23-18.9-8 (providing that “[t]he director shall have full power to make all rules and regulations establishing standards to be met for the issuance of [solid waste management facility licenses] with those standards affording *great weight to the detrimental impact* that the placement of such a facility shall have on its surrounding communities.” The statute also requires that “[t]he council shall only approve a site after evaluation of alternative sites and assessment of comparative environmental impact at the sites in accordance with law and state planning council rules, and in the absence of these, the council shall promulgate rules for the evaluation and/or assessment, and distribution of location of sites for waste facilities among the regions of this state.” Id.

No such municipality nor state planning council certification has been sought, let alone approved, for this proposed Facility. Importantly, had MRI sought these necessary certifications, it would have provided other opportunities for public input and may have impacted the substance of MRI’s application or even the location of the site. The failure to adhere to these requirements, which are intended to ensure adequate oversight and consideration of potential environmental and health impacts, blatantly disregards the Refuse Disposal Act and its implementing Medical Waste Regulations, circumvents key aspects of the public review process, and frustrates review of this application.

3) The Minor Source Permit should have included Public Notice and Comment and Made Publicly Available

Last/Finally, the Attorney General wants to take this opportunity to comment on the minor source air permit issued to MRI by RIDEM on May 7, 2020, recognizing it is outside the scope of the medical waste facility license at issue. While minor source permits do not require public notice and comment, RIDEM has clear discretion to do so if the circumstances so require. However, despite the novelty of the technology, the absence of testing data, and the potential risks the emissions pose to the surrounding communities, RIDEM has unfortunately refrained from exercising that discretion here. The Attorney General encourages RIDEM to, at the very least, make the approved minor source air permit for this facility available on RIDEM’s website, provide the public with more information about the air control technology approved by RIDEM for use by this applicant and explain how and why RIDEM was able to conclude that this technology is adequate and appropriate given the lack of stack testing. The Attorney general also recommends that when reviewing air permit applications for such untested and unproven technologies in the future, RIDEM consider utilizing its discretion to involve the public more dynamically.

While the unknowns of the proposed Facility should not necessarily preclude a project solely because it is first-of-its-kind, the novelty of this proposal merits close scrutiny and strict adherence to relevant regulations. Further, the public should have been provided ample and meaningful opportunities to comment and question RIDEM’s consideration of the technology at each stage, including the minor source permitting process, to ensure that all of the unknowns are being adequately considered, planned for, and addressed in a manner that satisfies the expressed concerns. This transparency is key to holding the State accountable for how air quality is protected and how potentially infectious waste is managed in our state.

Accordingly, the Attorney General respectfully requests that RIDEM instruct MRI to resubmit its application for the medical waste facility after it has received the requisite certifications and then proceed to review MRI’s revised application under the Alternative Technologies analysis. Only then, and after *thorough testing*, should this application be submitted for public comment.

This Attorney General appreciates RIDEM’s attention to this matter.

Respectfully submitted,

Attorney General
Peter F. Neronha

By his attorney,

/s/ Alison B. Hoffman

Alison B. Hoffman
SAAG, Environment & Energy Unit

cc: Susan Forcier, Senior Legal Counsel, RIDEM